

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Preemption, Pursuant to)	
Section 253 of the Communications Act)	CC Docket No. 96-45
And Common Law Principles of)	
South Carolina Statutes that)	
Established an Interim LEC Fund)	

**COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)¹ hereby submits its comments in response to the Federal Communications Commission's (Commission's or FCC's) September 4, 2003, Public Notice² seeking comment on AT&T Corporation's October 2, 2002, Petition for Preemption³.

Established in 1996, the South Carolina Interim Local Exchange Carrier (LEC) Fund allows incumbent local exchange carriers (ILECs) to lower their intrastate access rates to match those of BellSouth, the largest local exchange carrier (LEC) in South

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 555 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members also provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). And all of NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Wireline Competition Bureau Seeks Comment on AT&T Corporation's Petition for Preemption, Pursuant to Section 253 of the Communications Act and Common Law Principles, of South Carolina Statutes That Established an Interim Local Exchange Carrier Fund; Pleading Cycle Established*, CC Docket No. 96-45 (rel. September 4, 2003).

Carolina. To compensate for the revenues lost due to the reduction in access rates, ILECs were allowed to raise other rates up to the level of the statewide averages. Any further revenue shortfalls would be made up through the Interim LEC Fund, which is funded by those entities benefiting from the ILECs' access rate reduction. Contributions to the fund are assessed in proportion to the amount of the rate reduction.

On October 7, 2002, AT&T Corporation (AT&T) submitted a petition seeking preemption of the South Carolina Interim LEC Fund. In their petition, AT&T argued that the Interim LEC Fund is in conflict with Sections 253 and 254 of the Communications Act of 1936, as amended⁴ (Act). Specifically, AT&T claimed that the Interim LEC Fund violates Section 253(a) of the Act, which prohibits states from establishing requirements that create barriers to market entry, and Section 254(f), which requires that all state universal service programs be funded by all telecommunications carriers who provide intrastate service.

AT&T is incorrect in their assertions. First and foremost, the South Carolina Interim LEC Fund is not a universal service fund; hence the vast majority of AT&T's assertions are rendered invalid. Second, the Interim LEC Fund actually benefits large carriers, AT&T included. Third, the Interim LEC Fund does not, as AT&T erroneously claims, impose a barrier to market entry. Finally, the Interim LEC Fund is competitively neutral, despite AT&T's claims to the contrary.

³ *In the Matter of AT&T Corp. Petition for Preemption, Pursuant to Section 253 of the Communications Act and Common Law Principles, of South Carolina Statutes that Discriminate Against New Entrants*, October 7, 2002 (AT&T Petition).

⁴ 47 U.S.C. §253 and §254.

I. THE SOUTH CAROLINA INTERIM LEC FUND IS NOT A UNIVERSAL SERVICE FUND.

The South Carolina Interim LEC Fund is not a universal service fund. It arose from the State Public Service Commission's rebalancing of retail rates. It is merely a means of collecting the same costs in a different way.

The costs that are covered by the Interim LEC Fund are legitimate costs of doing business. The Fund is not a subsidy. It is a means of allowing ILECs to recover their revenue requirements which otherwise would not be recovered due to the rate rebalancing.

The Public Service Commission of South Carolina at this time differentiates between the Interim LEC Fund and the state Universal Service Fund (which was established in 2001, a full five years after the Interim LEC Fund.) The state Commission thus currently recognizes that these are two separate and distinct funds.

II. FAR FROM BEING HARMED, AT&T IS AMONG THE CHIEF BENEFICIARIES OF THE INTERIM LEC FUND.

As noted previously, ILECs choosing to participate in the Interim LEC Fund have agreed to reduce their intrastate access rates to match those of BellSouth, the largest LEC in South Carolina. This access charge reduction benefits those carriers, including IXCs, who purchase switched access from ILECs participating in the Interim LEC Fund.

While AT&T claims “carriers who pay into the fund bear an additional cost that direct competitors do not,”⁵ they fail to note that these carriers receive a corresponding benefit in proportion to their payment obligation.

Because access rates are accessed on a per-unit basis, heavier users receive greater overall benefits. Thus AT&T, one of the biggest consumers of terminating services in the state of South Carolina, receives substantial benefits from the Interim LEC fund.

III. RATHER THAN SERVING AS A BARRIER TO MARKET ENTRY, LOWER ACCESS CHARGES SERVE TO FACILITATE ENTRY.

AT&T claims that the South Carolina Interim LEC Fund creates a barrier to entry that warrants preemption under Section 253 of the Act. AT&T simultaneously seeks to benefit from the Interim Fund as an IXC while it argues that its inability to access the fund as a CLEC is a barrier to entry. AT&T would reap a windfall if it were permitted to recover from the Interim Fund. It has not demonstrated that the availability of the Fund inhibits its ability to compete in the local markets of the carriers that receive the funds or that it has provided the same character and scope of service that the ILECs provide. South Carolina's adoption of this rate rebalancing approach has not prohibited AT&T or any other CLEC from providing competitive local exchange services. Section 253 has not been violated.

In any event, AT&T is a clear beneficiary of the Fund. The availability of the access charges allow carriers like AT&T to serve customers in remote and/or rural areas without the expense of constructing their own facilities to do so. Reducing these charges, as the Interim LEC Fund does, further reduces the cost to those carriers

⁵ AT&T Petition at 16.

seeking to terminate calls in rural ILECs' service areas. In fact, in many instances carriers end up paying less than they would in the absence of the fund.

IV. THE SOUTH CAROLINA INTERIM LEC FUND IS COMPETITIVELY NEUTRAL.

AT&T claims, "the South Carolina program cannot be deemed competitively neutral under any measure."⁶ Competitive neutrality requires that similar carriers be afforded the same treatment. In that respect, the South Carolina Interim LEC Fund is competitively neutral. ILECs differ from new entrants in one dramatic manner—they are subject to carrier of last resort (COLR) obligations. Consequently, they are obligated to provide service to any and all customers within their service area who request it, regardless of the expense or technical difficulty involved. Other carriers are not bound by COLR obligations. Thus, they differ from the ILECs in an important and substantial manner, and restricting them from participation in the South Carolina Interim LEC Fund does not violate the principal of competitive neutrality.

⁶ AT&T Petition at 3.

V. CONCLUSIONS

For the above-noted reasons, NTCA requests that AT&T's petition for preemption of the South Carolina Interim LEC Fund be denied.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 03-2779 was served on this 17th day of November 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy

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